

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U. S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

IN RE:

THOMAS RAYMOND PIERSON,

Debtor.

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AWANA MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

CASE NO. 03-42049-DML-13

MEMORANDUM OPINION AND ORDER

On this day the court considered the Motion of PECO Federal Credit Union ("Movant") to Allow Filing of Claim ("Motion") filed on October 29, 2003. Movant seeks permission to allow a late filed claim to reflect Movant's secured status and to obtain payments from the Trustee through Thomas Raymond Pierson's ("Debtor") Plan. Neither the Debtor nor the Trustee objected to the Motion.

Movant argues that the relief sought should be granted because Movant did not receive notice of Debtor's pending bankruptcy until a payment from the chapter 13 Trustee was received by Movant on October 1, 2003, well after the August 4, 2003, bar date set by this court for filing proofs of claim. Movant contends that Debtor did not file his creditors' mailing matrix until after notice of the bankruptcy filing was served by the clerk of this court and, consequently, Movant did not timely receive notice of Debtor's bankruptcy filing. Moreover, Movant asserts that no other person or entity informed Movant of Debtor's bankruptcy prior to October 1, 2003.

This is a Chapter 13 case. Rule 3002 of the Federal Rules of Bankruptcy Procedure provides that a proof of claim is "timely filed if it is filed not later than 90 days after the first date

set for the meeting of creditors called under § 341(a) of the Code.” FED. R. BANKR. P. 3002(c).

Here, Movant acknowledges the untimeliness of its proof of claim.

Rule 3002 also outlines five exceptions to the general rule for timely filing, viz.:

- (1) A proof of claim filed by a governmental unit is timely filed if it is filed not later than 180 days after the date of the order for relief. On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit.
- (2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.
- (3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.
- (4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.
- (5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notified the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

FED. R. BANKR. P. 3002(c)(1)-(5). Here, Movant states no facts which would support recourse to one of the enumerated exceptions.

Rule 9006 allows an extension of the time limits for filing a proof of claim but also specifically limits such enlargement:

- (1) In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a

specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

- (2) Enlargement Not Permitted. The court may not enlarge the time for taking action under Rules 1007(d), 2003 (a) and (d), 7052, 9023, and 9024.
- (3) Enlargement Limited. The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

FED. R. BANKR. P. 9006(b).

Thus, because the plain language of Rule 9006(b)(3) allows enlargement of the time to file late proofs of claim “only to the extent and under the conditions stated in [Rule 3002(c)],” it would appear this court is not empowered to enlarge the time for Movant to file a late proof of claim. Nevertheless, this court believes that “implicit in the strict time requirements of the bankruptcy rules is the assumption that a creditor has received notice of the bankruptcy petition. The basic principles of due process—notice and the opportunity to be heard—require no less.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dodd (In re Dodd)*, 82 B.R. 924, 928 (N.D. Ill. 1987) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). As a general rule, the requirement of due process would prevent discharge of the claim of a creditor without notice.


In the case *sub judice*, the court has conducted a thorough review of Debtor’s complete original file maintained by the Clerk of Bankruptcy Court and is convinced that Movant did not in fact receive timely notice of Debtor’s bankruptcy filing due to a failure of the Clerk’s

procedures for electronically transmitting notice (presumably caused by the contemporaneous conversion to electronic filing). Indeed, the March 5, 2003, "Certificate of Service" of notice of bankruptcy generated by the Clerk's office indicates "[t]he following entities were served by electronic transmission. NONE. Total: 0."

Because in this case the Clerk's failure to give proper notice would either unjustly deprive Movant of due process or Debtor of discharge of his debts, this court is persuaded that the strict time limits provided by the Rules should not be enforced. Neither Movant nor Debtor should be prejudiced by the system's failure. Accordingly, and specifically limited to the unique facts of this case, the Motion is **GRANTED**.

All claimants shall have sixty (60) days from the date of this Order to file proofs of claim. The Clerk shall transmit to creditors, Debtor, and the chapter 13 Trustee notice of the new date by which claims must be filed.

SO ORDERED this 18th day of November, 2003.



DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE